

STATE OF INDIANA)
)
COUNTY OF MARION)

SS:

IN THE MARION SUPERIOR COURT
CAUSE NO.49D07-0408-PL-001624

STATE OF INDIANA,
Plaintiff,

v.

INDY FITNESS, INC.,
and BRIAN LINDO

Defendants.

FILED

146

NOV 15 2004

Dana Ann Sadler
CLERK OF THE
MARION CIRCUIT COURT

MOTION FOR DEFAULT JUDGMENT

The Plaintiff, State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Eric Jackson, pursuant to Trial Rule 55 of the Indiana Rules of Trial Procedure, respectfully moves the Court to enter a default judgment against the Defendants, Brian Lindo and Indy Fitness Inc., and in support states:

1. On August 30, 2004, the Plaintiff filed its Complaint for Injunction, Restitution, Costs, and Civil Penalties.
2. On September 9, 2004, service of the Plaintiff's Complaint was made on the Defendant, Brian Lindo, by certified mail.
3. On September 17, 2004, service of the Plaintiff's Complaint was made on the Defendant, Indy Fitness Inc., by certified mail.
4. On September 28, 2004, the Defendant, Brian Lindo, filed a letter with the Court requesting additional time to hire an attorney. The Court treated this as Motion for Enlargement of Time, giving Defendants an additional 30 days to file Answers.

5. The Defendants have failed to file an answer, plead or request an additional enlargement of time, within the extended 30 day time period.

6. Defendant, Brian Lindo, is not an infant, incompetent, or in military service.

WHEREFORE, the Plaintiff, State of Indiana, requests that the Court enter a default judgment against the Defendants as follows:

1. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c)(1) enjoining the Defendants, their agents, representatives, employees, successors, and assigns, from closing a health spa facility if it/he:

A. fails to provide the purchaser a refund based upon the total consideration proportional to the elapsed time portion of the contract at the time of unavailability, when the health spa's facilities or service described in the contract are no longer provided before full receipt of the services or use of the facilities for which the buyer contract, unless the Defendants:

1) offer the buyer the option of a proportional refund or to choose to complete the unused portion of the contract, including renewal periods, at another location that is owned, controlled, affiliated with, or operated by the Defendants. Any such modification of the contract must be in writing.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against Defendants for the following relief:

a. cancellation of the Defendants contracts with the following pursuant to Ind. Code § 24-5-0.5-4(d):

1. Tim Starkey
2. Ron Elkins
3. Gabrielle Bovenzi

4. Michael Schmidt
5. Diana Jones
6. Sandra Nichols
7. Adam Jones
8. Keith & Angela Hanson
9. Jim Louck
10. Cindy Anderson
11. Janet Fullen
12. Gene Reed
13. David Boyles

b. consumer restitution pursuant to Ind. Code § 24-5-0.5-4(c)(2), to be paid to the Indiana Office of Attorney General on behalf of the following consumers in the following amounts:

1. Tim Starkey	\$288.00
2. Ron Elkins	\$185.80
3. Gabrielle Bovenzi	\$185.80
4. Michael Schmidt	\$176.50
5. Diana Jones	\$74.25
6. Sandra Nichols	\$204.75
7. Adam Jones	\$120.00
8. Keith & Angela Hanson	\$391.60
9. Jim Louck	\$150.00
10. Cindy Anderson	\$90.75

- | | |
|------------------|----------|
| 11. Janet Fullen | \$321.00 |
| 12. Gene Reed | \$99.00 |
| 13. David Boyles | \$406.00 |

c. costs pursuant to Ind. Code §24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action in the amount of Four Thousand Four Hundred and One Dollars (\$4401.00). Attached as Exhibit "A" and incorporated by reference is Plaintiff's Affidavit Supporting Request for Attorney Fees;

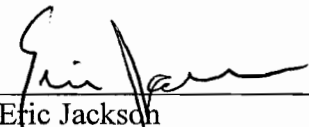
d. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-4(g) for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

e. on Count III of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8 for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

f. all other just and proper relief.

Respectfully submitted,

Steve Carter
Attorney General of Indiana
Atty. No. 4150-64

By: 
Eric Jackson
Deputy Attorney General
Atty. No. 19415-49

Office of Attorney General
Indiana Government Center South
302 W. Washington, 5th Floor

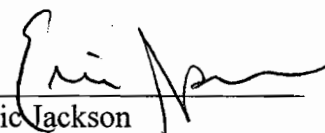
Indianapolis, IN 46204
Telephone: (317) 233-3987

CERTIFICATE OF SERVICE

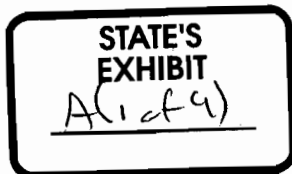
The undersigned hereby certifies that a copy of the above Motion for Default was mailed
by United States Mail, first class postage prepaid, to the following on this 12th day of
November 2004:

Brian Lindo
6030 Meteor Avenue
Toledo, OH 43623

Indy Fitness Inc.
Attn: Steve Bradbury
3507 E. County Road 650 S.
Kirklin, IN 46050


Eric Jackson

IN THE MARION SUPERIOR COURT
CAUSE NO.49D07-0408-PL-001624



3/27/03	Prepared for meeting with Defendant/ Drafted CID	1.6
3/28/03	CID Depo of Defendant	2.1
5/25/03	P/C to Erickson's Atty.	0.1
5/27/03	P/C from Erickson's Atty.	0.2
5/30/03	V/M from Erickson's atty.	0.1
5/30/03	P/C to Erickson's Atty.	0.1
6/02/03	P/C to Erickson atty.	0.1
6/30/03	Prepared for Erickson's CID	1.8
7/01/03	CID of Erickson	1.7
1/26/04	Reviewed Charts, checks, payments	0.9
1/30/04	Reviewed files & entered info into spreadsheet	2.7
2/02/04	Reviewed Ct. docs/organized files	1.4
2/03/04	Added info to spreadsheet	1.8
2/13/04	Worked on spreadsheet/ reviewed caselaw-research	1.1
2/16/04	Listened to Lindo's CID	0.7
3/04/04	Drafted Motion to Intervene	0.5
4/13/04	P/C from Consumer Reed	0.1
4/16/04	Research and prepared for Motion to Intervene	2.0
4/19/04	Prepared for Motion to Intervene	1.5
4/20/04	Attended Hearing on Motion to Intervene	0.5
6/09/04	Reviewed draft of Complaint	0.3

**STATE'S
EXHIBIT**

A(2041)

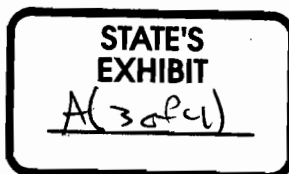
7/21/04	Drafted Complaint	1.0
7/28/04	Drafted Complaint	1.2
7/29/04	Drafted Complaint	0.6
8/04/04	Finished rough draft of Complaint	0.6
8/18/04	Read transcript of Lindo CID	0.2
8/23/04	Made changes & additions to Complaint	1.0
8/25/04	Finished drafting Complaint	0.5
8/26/04	Research re: Service on dissolved corp.	0.3
9/24/04	Drafted rough draft of Default on Lindo	0.8
11/01/04	Added Indy Fitness to Default	0.7
11/04/04	Double checked C amounts	0.5
11/05/04	Finished Drafting Default	0.6
total		32.6

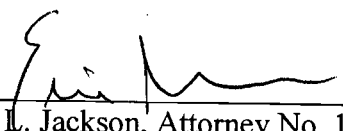
4. The Plaintiff is entitled to an award of costs incurred in the investigation and prosecution of this action pursuant to Indiana Code 24-5-0.5-4(g).

5. Affiant has been engaged in the practice of law for over seven (7) years, and a reasonable attorney fee for the work affiant has performed during the investigation and prosecution of this action is One Hundred Thirty-Five Dollars (\$135.00) per hour.

6. All of the above statements are within affiant's personal knowledge.

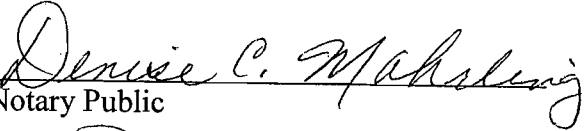
FURTHER AFFIANT SAYETH NOT.




Eric L. Jackson, Attorney No. 19415-49
Deputy Attorney General
Office of the Attorney General
302 W. Washington Street, 5th Floor
Indianapolis, IN 46204

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

SUBSCRIBED AND SWORN to before me a Notary Public, in and for said County and
State, this 10th day of November, 2004.


Notary Public

Printed: Denise C. Mahaling

My commission expires:
March 6, 2009

STATE'S
EXHIBIT

A(4 of 4)